

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no.	:	2499 of 2020
First date of hearing:		07.11.2019
Order Reserve On	:	05.05.2023
Order Pronounce On:		26.05.2023

Indu Anand Gaurav Anand R/o: 103 A, Fairway East, M3M Golf Estate, Sector-65, Gurugram	Complainants
Versus	
M/s Ireo Private Limited Office at : - A11, First Floor, Neeti Bagh, New Delhi-110049	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Shri Gaurav Anand in person	Complainants
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint dated 24.08.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"Ireo City" at sector 60, Gurgaon, Haryana
2.	Licensed area	329.923 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no.	63 of 2009 dated 03.11.2009 for 110.144 acres 107 of 2010 dated 2012.2010 for 139.838 acres 60 of 2012 dated 11.06.2012 for 79.941 acres
5.	RERA registered/not registered	Not Registered
6.	Plot no.	C1_51 (page no. 92 of complaint)
7.	Unit measuring	358.80 sq. yd. [page no. 92 of complaint]
8.	Date of provisional allotment	09.07.2013 (page no. 79 of complaint)
9.	Date of environment clearance	24.12.2013 (annexure R-14 on page no. 64 of reply)



10.	Date of execution of plot buyer's agreement	27.08.2013 (page no. 87 of complaint)
11.	Date of consent to establish	14.02.2014 (annexure R- 15 on page no. 70 of reply)
12.	Due date of delivery of possession	14.02.2017 [calculated from the date of consent to establish] Note: Grace period is not allowed.
13.	Possession clause	11.1 Possession and Holding Charges Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the offer of conveyance of the said plot to the Allottee within a period of 36 months from the date of receipt of requisite approvals ("Commitment Period"). The Allottee further agrees and understands that the

		Company shall additionally be entitled to a period of 6 months ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.
14.	Surrender by complainant	20.01.2018 (page no. 149 of complaint)
15.	Total consideration	Rs.4,32,43,434/- [as per payment plan on page no. 121 of complaint]
16.	Total amount paid by the complainants	Rs. 2,43,63,378/- [as alleged by complainants]
17.	Completion certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

The complainants have submitted as under:

- That on 08.07.2013 complainants booked a plot measuring 358.8 sq. yds. and paid a sum of Rs. 38,67,864/- through cheque dated 02.07.2013. The complainants were made to submit a printed application which was handed over to them by the respondent, for the booking of the said plot containing certain terms and conditions therein and a schedule-I attached to the said application containing the indicative terms and conditions, which were to form a part of the plot buyer's agreement to be executed in due course. As per the terms mentioned in the said schedule it was represented by the respondent to the complainants that the possession of the plot shall be handed over to the complainants and the conveyance shall be executed in

their favour within a period of 36 months from the date of receipt of requisite approvals commitment period), the respondent being entitled to a grace period of 180 days after the expiry of the said commitment period for unforeseen delays beyond the reasonable control of the respondent (clause 40). The respondent was required to notify the complainants in writing to pay the balance sale consideration as per the payment plan and come for the execution of the conveyance deed and thereafter possession of the plot will be handed over to them (clause 43).

4. That the respondent informed the complainants vide provisional allotment offer letter dated 9th July, 2013 that they had made a provisional allotment of plot no. ICP-C-CO1-51 at IREO City, sector-60, Gurugram, Haryana to the complainants on the terms and conditions set out in the plot buyers agreement to be mailed to the complainants in due course for signature.
5. That the plot buyer's agreement was executed between the complainants and the respondent with respect to the residential plot. As per the agreement, the respondent was in the process of developing phase-I of the residential colony "IREO City" consisting interalia of plots, villas, built up plots, commercial shopping area, etc. in accordance with the layout plan approved/ to be approved and sanctioned by DTCP. In the said agreement the allotment of said plot was reiterated at a total sale consideration of Rs.4,32,43,434/-. In the agreement it was reiterated that the possession of the plot shall be handed over and conveyance of the plot shall be executed within a period of 36 months from the date of receipt of requisite approvals Commitment Period), the respondent being however entitled to a grace period of 180 days after the expiry of the said commitment period for unforeseen delays beyond the reasonable control of the respondent.

6. That the complainants have paid a total sum of Rs. 2,43,63,378/- to the respondent as part of the sale consideration.
7. That till date respondent neither issued notice intimating when it was handing over possession nor made the offer of executing conveyance as per the agreement. The complainants kept on following up with the respondent, but the officials of the respondent refused to give any commitment as to when the possession would be handed over.
8. That the complainants however made several visits to the office of the respondent and met its concerned officials and senior officials but to no avail. Left with no option, the complainants decided to seek cancellation of the residential plot and sought refund of their money with interest and made their request for the first time vide email dated 20.01.2018. Thereafter, various emails were sent on 10.08.2018, 20.08.2018, 03.02.2019 seeking refund of the paid up amount.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
 - (i) Direct the respondent to refund total amount along with interest @ 18% p.a.
 - (ii) Cost of litigation of Rs. 2,00,000/-.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

The respondent has contested the complaint on the following grounds: -

11. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
12. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence and laches.
13. That this Hon'ble Authority has no jurisdiction to adjudicate upon the present complaint.
14. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the buyer's agreement.
15. That the complainants, after checking the veracity of the project namely, 'Ireo City Center', Gurugram had applied for allotment of an apartment vide his booking application form dated 08.07.2013.
16. That based on the said application, respondent vide its allotment offer letter dated 09.07.2013 allotted to the complainant's apartment no. ICP-C-C01-51 having tentative super area of 358.8 square yards for a sale consideration of Rs. 4,32,43,434/-. The respondent had sent the copies of the agreement to the complainants vide letter dated 27.08.2013.
17. That the respondent kept on raising payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainants made the payment of the earnest money and the part-amount of the total sale consideration. It is submitted that the complainants have made the part-payment out of the total sale consideration and are still bound to make the



payment towards the remaining due amount along with the registration charges, stamp duty, service tax and other charges at the appropriate stage. However, it is pertinent to mention herein that complainants had committed default in making timely payment of the second installment amount dated 13.12.2013 for the net payable amount of Rs. 38,67,864/- and failed to pay the same despite reminders dated 08.01.2014 and 29.01.2014 and final notice dated 19.02.2014 were issued by the respondent to the complainants.

18. That the respondent raised the payment demand dated 13.03.2014 towards the third installment for the net payable amount of Rs. 77,35,728/-. However, despite reminders dated 08.04.2014 and 29.04.2014 and final notice dated 20.05.2014, the complainants remitted only a part amount and the remaining due amount was adjusted in the next installment amount as Arrears.
19. That complainants had committed default in making timely payment of the fourth installment amount dated 12.06.2014 for the net payable amount of Rs. 86,03,592/- and failed to pay the same despite reminders dated 08.07.2014 and 29.07.2014 were issued by the respondent to the complainants.
20. That the possession of the plot is supposed to be offered to the complainants in accordance with the agreed terms and conditions of the plot buyer's agreement. it is submitted that clause 11.1 of the plot buyer's agreement and clause 40 of the schedule - I of the booking application form states that '...subject to the force majeure as defined herein and further subject to the allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to make the offer of conveyance of the said plot to the applicant within a

period of 36 months from the date of receipt of requisite approvals (commitment period). The applicant further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period) after the expiry of the said commitment period'. Furthermore, vide clause 11.3 of the plot buyer's agreement, the complainants had further agreed to the 'extended delay period' of 12 months from the end of grace period.

21. That from the aforesaid terms of the plot buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. even otherwise development can't be undertaken in the absence of the necessary approvals. in the present case, it may be noted that the environment clearance issued by state environment impact assessment authority, Panchkula for the plotted development of 29.79 acres at sector 60 was granted on 24.12.13. It has been specified in clause 1 of clause A of the environment clearance of the said project that the consent to establish has to be obtained before starting the development of the project. The consent to establish of the said project was granted on 14.02.2014. Therefore, the pre-condition of obtaining all the requisite approvals was fulfilled only on 14.02.2014. In terms of clause 11.1 and 11.3 of the agreement, the proposed time for handing over of possession expired only on 14.08.2018.
22. That the respondent has already completed the development of the project. The respondent has already applied for the grant of part completion certificate on 12.05.2016. Thus, after completing the development of the project in a timely manner, the respondent has done everything within its power and control for obtaining completion certificate and nothing more at its end can be done by the respondent. However, the respondent has come



to know on making enquiries in the concerned offices that the authorities in question are presently not actively processing such applications of the respondent and even of other builders on the ground that some CBI Probe has been ordered regarding proposed acquisition and release of HUDA area measuring about 1400 acres due to which the respondent is also suffering unnecessarily and badly without any fault on its part. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice. It is submitted that the same falls under the ambit of the definition of 'force majeure' condition as defined in the plot buyer's agreement. It is pertinent to mention herein that the complainants are aware of the same as is evident from a bare perusal of the emails attached by them along with the complaint.

23. That it is submitted that the complainants are real estate investors who had booked the plot in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants now want to somehow illegally extract benefits from the respondent by raising baseless, false and frivolous pleas. Such malafide tactics of the complainants cannot be allowed to succeed.
24. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

25. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The

authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

26. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

27. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

28. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

29. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

F. Findings on the objections raised by the respondent.

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

30. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

31. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the

Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017* which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

32. Further, in appeal no. 173 of 2019 titled as *Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered

into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

33. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

34. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"34. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose

decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

35. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

36. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National

Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

37. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and

accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

38. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings regarding relief sought by the complainants

(i) Direct the respondent to refund total amount along with interest @ 18% p.a.

39. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

40. Clause 11 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

11. Possession and Holding Charges

"Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to make the offer of conveyance of the said plot to the Allottee within a period of 36 months from the date of receipt of requisite approvals ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 months ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

41. The complainants booked the unit in the project of the respondent company namely Ireo City situated at sector 60 for a total sale consideration of Rs.4,32,43,434/-. The plot buyer's agreement was executed between the parties on 27.08.2013. As per possession clause 11 of the buyer's agreement, the possession of the unit was to be handed over by within 36 months from the date of receipt of requisite approvals. The requisite approval is consent

to establish which was granted on 14.02.2014. The due date for handing over of possession comes out to be 14.02.2017. The grace period is not allowed as it is unqualified.

42. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

43. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the

project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

44. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
45. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
46. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

47. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
48. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
49. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 2,43,63,378/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.
- (ii) Cost of litigation of Rs. 2,00,000/-.**
50. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of

compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority: -

51. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

- i. The respondent/promoter is directed to refund the amount of Rs. 2,43,63,378/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

52. Complaint stands disposed of.

53. File be consigned to the registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.05.2023